IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.495 of 2000

M/s IVP Limited
rep by A.Mahadevan,Power of Attorney
727, Anna Salai
Chennai-600006 ..Appellant/complainant

-vs-

1. M/s BP Refineries
rep, by its Partner Mr.Narayanadas Sohanlal Vaid
57/59 Zaveri Bazar
Mumbai-400 002

2. Mr.Narayandas Sohanlal Vahid
Partner
M/s B.P.Refineries
57/59 Zaveri Bazar
Mumbai-400 002

.. Respondents/accused

This appeal is filed under section 378 of Cr.P.C against the Judgment made in C.C.No.4030 of 1997 dated 4.4.2000 on the file of the Court of XIV Metropolitan Magistrate, Egmore, Chennai.

For appellant : Mr.N.Anand Venkatesh
for M/s Sai Raaj Associates

For respondents : Mr.R.Vijayaraghavan

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JUDGMENT

This appeal has been preferred against the Judgment of acquittal in C.C.No.4030 of 1997 on the file of the Court of XIV Metropolitan Magistrate, Egmore, Chennai. The complainant is the appellant herein. The complaint was preferred under Section 200 Cr.P.C for an offence under Section 138 of Negotiable Instruments Act against the accused.

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2. The facts in brief in the complaint is that A1 has given a cheque for Rs.18,01,063 dated 1.3.1997 for the existing debt due to the complainant company which on representation to the bank was bounced on the ground that there was insufficient fund in the account of the drawer.

3. After recording the sworn statement, the complaint was taken on file by the learned Judicial Magistrate and summons were issued to the accused. On receipt of the summons, the accused appeared before the Court and copies were furnished to the accused under Section 207 Cr.P.C. And when the offence charged against the accused was explained to him and when questioned the accused pleaded not guility.

4. on the side of the complainant two witnesses were examined and Exs P1 to P11 were marked. When incriminating circumstances were put to the accused under Section 313 Cr.P.C. The accusued denied their complicity with the crime. Neither the accused have examined any witness nor produced any document.

5.P.W.1 in his evidence would contend that he is an authorised agent of the plaintiff's company and Ex P1 is the power of attorney issued by the Company and that the second accused is the partner of the first accused Company and that the accused in connection with the purchase of Palmoil, owe Rs. 20,43,154 /- to the complainant. Ex P2 is the invoice for the supply of Palmoil to the accused and Ex P3 is the debit note prepared on the basis of Ex P2. Ex P4 is the statement of account to show the amount due from the accused to the complainant. On 1.3.1997, the accused gave a cheque for Rs.18,01,063/- in partial discharge of the amount due to the complainant. When the said cheque was presented in the bank of India ,Thousand Lights Branch on 5.4.1997, the said cheque was bounced on 24.4.1997 with an endorsement referred to "drawer".Ex P6 is the returned memo and Ex P7 is the debit advice. Ex. P8 is the notice sent to the accused . Ex P9 and Ex P10 are the acknowledgements dated 10.5.1997. Hence the complaint.

6. P.W.2 is the Senior Manager of the Indian Bank Nepean Sea Road Branch, Mumbai. He would depose that the first accused Company is having a Current Account No.669. When Ex P5 cheque came to his Bank for collection on 11.4.1979 which was returned with an endorsement as "referred to Drawer", since there was no sufficient funds available in the account of the drawer. EX P6 is the cheque retrned memo and the copy of the statement of account is Ex P11.

7. When incriminating circumstances were put to the a ccusued ,they denied their complicity with the crime. The learned trial Judge, after going through the evidence has come to a

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conclusion that the complaint was not preferred by the proper and authorised person of the complainant Company and the learned Judge has further held that the provisions contemplated under Sections 138 (a)(b)(c) of the Negotiable Instruments Act have also not been proved beyond any reasonable doubt to warrant conviction under Section 138 of Negotiable Instruments Act. A reading of the Judgment of the trial Court will clearly go to show that at Page 4 , the learned trial judge has come to a definite conclusion that the provisions contemplated under Sections 138 (a)(b)(c) have been followed and prima facie , there is case made out by the complainant under the above provisions of law. But subsequently, at paragraphp 5, the learned Judge has come to a conclusion that the complainant has not fully established the guilt of the accused beyond any reasonable doubt under Section 138 (a)(b)(c) of the Negotiable Instruments Act and the learned Judge has further observed at paragragh 5 of the Judgment that as per section 142 (1) of the Negotiable Instruments Act, a payee or the holder in due course of the Cheque is entitled to file the complaint. But a person has filed the complaint on behalf of the Company must have a valid Power of Attorney Deed to represent the Company. The learned Judge has rejected Ex P1 Power of Attorney on a trivial ground that it was not drafted as per Section 85 of the Indian Evidence Act which runs as follows:

> "The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by a Notary Public, or any Civil Judge, Magistrate, Indian Counsul or Vice counsul or representative of the Central Government, was so executed and authenticated."

8.A perusal of Ex P1 power of Attorney will go to show that it was executed and sanctioned before the Notary of Bombay. Both the Managing Director as well as Assistant Company Secretary have authorised the complainant Mahadevn to file the complaint and to take up appropriate legal proceedings in matters relating to the complainant company. At one place the date 30th day of Septemeber alone has been corrected with whitener and the said correction has been attested by the Executor. The Managing Director, who has authorised Mahadevan, the complainant to represent the Company has also signed in Ex P1 power of attorney. Under such circumstances, the findings of the learned trial Judge cannot be sustained for a moment.

9. Ex P4 is the statement of account produced by the complainant to show that under the transaction between the plaintiff's Company and the accused Company, a sum of Rs.20,43,154 was the amount due as on 31.1.1997 to the plaintiff Company from

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the accused and the cheque was issued by the accused for Rs.18,01,063/- on 1.3.1997 under Ex P5. The complainant has also produced invoice and debit note for the transaction under Exs P2 and P3. The accused have not taken any plea that Ex P5 cheque is a forged one. On the other hand, the accused have not chosen to send any reply to the notice sent by the complainant under Ex P8.Exs P9 and P10 are the acknowledgements for the accused having received those notices. The evidence of P.W.2 will go to show that Ex P5 cheque was bounced on presentation with the Bank. Ex P6 is the returned memo and Ex P7 is the debit invoice, So all the ingredients under Section 138 (a)(b)(c) have been fulfilled by the complainant to prefer a complaint against the accused under Section 138 of the Negotiable Instruments Act. So I am of the considered view that the complainant has proved the guilt of the accused under Section 138 of the Negotiable Instruments Act.

10. The learned counsel appearing for the appellant relying on a decision reported in (2002) 1 Supreme Court Cases 234) M.M.T.C.Ltd., -vs- Medical Chemicals and Pharma (P) Ltd., and contended that a complaint preferred by a Company is maintainable under Section 138 of the Negotiable Instruments Act,even by an employee of the Company without necessary authorisation. The exact observation by the Apex Court runs as follows:

> "This Court has, as far back as, in the case of Vishwa Mitter v.O.P.Poddar held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribed offences and makes any special provision for taking cognizance of such offences under the statue, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statue. In the present case, the only eligibility criteria prescribed by Section 142 is that the complainant must be by the payee or the holder in due course. This criteria satisfied as the complaint is in the name and on behalf of the appellant Company. In the case of Associated Cement Co., Ltd., v.Keshvanand it has been held by this Court that the complainant has to be a corporeal

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person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of an incorporeal person(like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in Court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there my be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground".

So in this case also, the complainant company a de jure person has been properly represented by P.W.1, the defacto complainant by a valid power of attorney under Ex P1. The learned counsel appearing for the appellant has relied on P.M.Vijayakumar.v.M/s Monara Chits (P) Ltd., Chennai (1998(1) MWN(Cr)202, and M.Lakshmi -vs- M/s Shanmuga Priya Textiles (P) Ltd., Thungavi,Udumalpet(1999 (III) CTC 764). In the earlier ratio((1998(1) MWN(Cr)202) there was no document produced to show that the complainant who had preferred the complaint on behalf of the company is an authorised person to represent the company only on that ground the private complaint was quashed under Section 434 Cr.P.C. Later ratio(1999 (III) CTC 764) , the complaint was quashed on the ground that there was no proper power of attorney in favour of a person who had preferred the complaint by the Managing Director of the Company. Only on that ground the complaint was quashed. But in the present case on hand, the above dictums will not be appliable

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on facts because here, Ex P1 power of attorney has been executed by the Managing Director of the Company which was also attested by a Notary public and the person who preferred a complaint namely Mahadevan is also an employee of the said Company.

11. The learned counsel appearing for the accused relying on Kadarkarai Reddiar-v-Arumuga Nadar(AIR 1992 Madras 346) and contended that Ex P1 is not a valid document. The whole validity of Ex P1 has been discussed by me in the earlier paragraphs in this Judgment. The facts in the above case relied on by the learned counsel for the accused will not be applicable to the present case because in the said case, a promissory note, an incholate document under Section 20 of Negotiable Instruments Act was relied on by the plaintiff in that case,but that is not the case on hand. Here, there is a valid authorisatioon under Ex P1 power of attorney in favour of the complainant to prefer a complaint. Hence I hold on the point that the Judgment of the trial Court is perverse and againsnt the provisions of law which necessitates this Court, to interfere and set aside the same. Point is answered accorindlgy.

12. In fine, the appeal is allowed and the Judgment in C.C.No.4030 of 1997 on the file XIV Metropolitan Magistrate, Egmore, Chennai is hereby set aside and the accused are convicted under Section 138 of Negotiable Instruments Act and sentencned to under go one year rigorous imprisonment and a fine of Rs.36,02,126/- (Rupees Thirty Six Lakhs two thousand one hundnred and twenty six - Twice the cheque amount)only in default to undergo three months rigorous imprisonment. The accusued is not available to reeive the sentence. The trial Court is directed to issue Non Bailable Warrant to secure the accused to undergo the sentence.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The XIVI Metropolitan Magistrate, Egmore, Chennai.
2. -do- Thro' The Chief Metropolitan Magistrate, Egmore, Madras 8.

+ 1 cc to M/s. Sai Raaj Associates SR No. 7042
+ 1 cc to Mr. R. Vijayaraghavan, Advocate SR No. 6735

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